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**Libel and Slander—Charging Conduct as Being a “Monstrous Immorality and Scandal” Not Necessarily Libel Per Se.**—The case of *Gandia v. Pettingill*, 32 Sup. Ct. 127, was brought by writ of error to the U. S. District Court of Porto Rico. The unanimous opinion therein, Justice Holmes speaking for the court, is, to us a somewhat curious document.

The facts show that Pettingill was United States Attorney for Porto Rico. He carried on, also, as was lawful, a private practice, even representing clients in suits against the government of Porto Rico, though his salary was paid by that government. Had he been an officer of that government he would have been forbidden by law to do these things.

A Porto Rican newspaper in a series of articles denounced Mr. Pettingill's conduct as “a monstrous immorality, a scandal,” etc., but conveyed the impression that what he did was within the law.

The court was requested to instruct the jury that plaintiff could not recover, however technically lawful his conduct was, unless there was express malice or the comment went beyond reasonable limits. The case was reversed for refusal to instruct as requested.

It certainly seems libelous per se to charge one with conduct amounting to “monstrous immorality,” and what is a libel per se gives a right of action. One cannot brand another as a thief and not be liable, because a statement of the circumstances going to show him a thief might disprove the aspersion.

Force seems to have been given to the fact that Porto Rican opinion reprobated such a practice as shown by its local policy, legislatively expressed, but that would serve to show the editorial denunciation would attract sympathy.

Mr. Justice Holmes speaks also in a manner somewhat strange in judicial writing as follows: “We do not see how, making reasonable allowance for the somewhat more exuberant expressions of meridional speech, it could be said, as a matter of law, that the comments set out in the declaration went beyond the permitted line.”

It has by some been thought that to cast upon one an aspersion of dishonorable conduct was considered more serious the further South you went than in the other direction. Judicial cognizance, however, seems to know that to call one a thief at the equator is merely extravagance in speech—something like “the idle wind which no man respecteth”—while in the temperate, or, at least, the north temperate zone of the Western Hemisphere, it would be libelous per se.

We think Mr. Justice Holmes' judicial cognizance embraces some things that are not so.\*

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\*Note. This comment is so delightfully put, and so consonant with our recent editorial at p. 881, that we copy it from the Central Law Journal.